

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 150.06 (c)
Title 14, California Code of Regulations
Re: Commercial Take of Cabezon, Greenlings and Sheephead

- I. Date of Initial Statement of Reasons: September 22, 2003
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: August 29, 2003
Location: Long Beach, CA
 - (b) Discussion Hearing: Date: November 7, 2003
Location: San Diego, CA
 - (c) Adoption Hearing: Date: December 5, 2003
Location: Sacramento, CA
- III. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Existing language of Section 150.06 (c), Title 14, California Code of Regulations (CCR), states that commercial seasons for cabezon, greenlings and sheephead (CGS) for all areas of the state are to be set annually in accordance with nearshore rockfish seasons established in Federal regulations for the area from 40°10' N. lat. (near Cape Mendocino) to the to the US/Mexican border. In 2003, commercial nearshore rockfish regulations for this area allowed fishing for 10 months of the year, with the two month closure period set as the months of March and April (Table 1).

Cabazon, greenlings, sheephead (CGS), California scorpionfish, and shallow and deeper nearshore rockfishes are included in the aggregation of nearshore fish stocks defined in Section 1.90, Title 14, CCR. These species all jointly occupy rock or reef nearshore habitats, and as a group, they compose the majority of landings made by the commercial live fish fishery in California. Commercial shallow and deeper nearshore rockfish and California scorpionfish stocks (known

until 2003 only as “minor nearshore rockfish”) are managed by the Pacific Fishery Management Council (PFMC or Council) under regulations promulgated by the National Marine Fisheries Service (NMFS), while CGS commercial fisheries are generally managed by the state.

At the September 2003 Council meeting, actions were taken that will result in commercial nearshore rockfish seasons for 2004 to be open in some areas of the state during some months, and closed in others. Therefore, from the regulations (Section 150.06, Title 14, CCR), it is not clear whether commercial CGS seasons are in fact open or closed. From the geographic area from 34°27' N. lat. (Point Conception) to the US/Mexican border (referred to as the southern area), commercial shallow and deeper nearshore rockfish fisheries are closed in January and February, while in the area from 34°27' N. lat. to 40°10' N. lat. (referred to as the central area); the closure period is in March and April as in 2003.

Since the closure periods are no longer consistent for the region from 40°10' N. lat. to the US/Mexican border, the existing Title 14 language must be changed to specify that the CGS commercial season is to be consistent with shallow and deeper nearshore rockfish commercial rockfish seasons in each particular geographic region. This strategy of aligning the CGS seasons with that of nearshore rockfish has been a consistent practice of the Fish and Game Commission in regulatory actions since 2002, based on concerns for bycatch of rockfish which would occur in targeted CGS fisheries if rockfish were prohibited from retention at that time.

Additionally, the proposed regulation changes require the Commission to determine whether the commercial CGS fishery shall have a closure period in the area from 40°10' N. lat. to the California/Oregon border (referred to as the northern area). This area does not have a closure period for nearshore rockfish. However, in 2003, the Commission adopted regulations which authorized commercial CGS fishing for a length of 10 months throughout the state, so that one area would not have more opportunity than another. Since 2002, the state's commercial CGS fisheries have been managed under very restrictive harvest levels, and in 2002 and 2003 commercial cabezon and greenling fisheries have been closed during the summer months due to early attainment of the commercial portion of the annual allowable catch. Consequently, the Commission may wish to establish a 2-month closure period for CGS in the northern area despite a 12-month rockfish season in that area in 2004.

Therefore, the Commission may select either not to enact a CGS closure in this area, or to enact a closure for the months of March and April, which would be consistent with the 2-month closure in the central area which is immediately adjacent. While the first option would align the CGS seasons with rockfish in the northern area, it would allow the northern fishery additional fishing opportunity for

CGS compared to the fishery in the southern and central areas.

Under the second alternative, fishing for CGS would be closed during March and April when fishing would be allowed for nearshore rockfish, and all areas of the state would have equal time on the water to access CGS fisheries. The catch and release of cabezon and greenlings incidental to targeted nearshore rockfish fisheries is less of a concern than incidental catch of rockfish to targeted CGS fisheries as cabezon and greenlings do not suffer from barotrauma. Since sheephead are not commercially available in the northern area, barotrauma or bycatch of this species is not an issue.

TABLE 1

2003 Commercial CGS and Nearshore Rockfish Regulations

Area	Species	Closure Period
40°10' N. lat (near Cape Mendocino) to the Oregon Border	Cabazon/ Greenlings/Sheephead	March-April
	Minor Nearshore Rockfish	None
40°10' N. lat (near Cape Mendocino) to Pt. Conception (34°27' N. lat)	Cabazon/ Greenlings/Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April
Pt. Conception (34°27' N. lat) to the U.S.-Mexico border	Cabazon/ Greenlings/Sheephead	March-April
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Pt. Conception	Cabazon/ Greenlings/Sheephead	January-February

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- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority cited: Sections 7071 and 8587.1, Fish and Game Code.
Reference: Sections 7071, 7652, 8585.5, and 8587.1, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None

- (d) Identification of Reports or Documents Supporting Regulation Change:

None were identified.

- (e) Public Discussions of Proposed Regulations Prior to Notice publication:

The 45-day comment period provides adequate time for review of the proposed regulations.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: Two options on how to align the commercial seasons for CGS in the northern area to better conform to new federally-established seasons for nearshore rockfish are prepared for the Commission's consideration, and are noticed as part of this regulatory package.
- (b) No Change Alternative: If the proposed regulatory amendments are not adopted, there will not be enforceable commercial CGS closure periods in any area of the state. As a result, commercial fishing for CGS would take place during periods when rockfish are closed, which would result in bycatch and mortality of nearshore rockfish.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the

proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Each permittee, buyer, and processor is considered a small business.

This regulatory action simply seeks to shift various months in which commercial CGS fishing activities may or may not occur, but the amount of allowable fishing time for each permittee in the southern and central areas of the state will not change as a result of the proposed regulations. For the northern area, if the Commission selects to allow for a 12-month CGS fishery instead of the currently authorized 10-month season, commercial nearshore fishermen in that area might receive some minor benefit from the opportunity to increase their time on the water. However, the degree of this benefit cannot be determined due to inability to project weather and fishing conditions or the competing impact of other regulations such as trip limits and harvest guidelines, which are likely to have a greater overall effect on a permittee's fishing success.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Informative Digest/Policy Statement Overview

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CGS compared to the fishery to the south. Under the second alternative, fishing for CGS would be closed during March and April when fishing would be allowed for nearshore rockfish, and all areas of the state would have equal time on the water to access CGS fisheries.

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